



महाराष्ट्र शासन राजपत्र

भाग चार-क

वर्ष २, अंक १२]

गुरुवार ते बुधवार, एप्रिल २८-मे ४, २०१६/वैशाख ८-१४, शके १९३८

[पृष्ठ ६]

[किंमत : रुपये ६.००]

प्राधिकृत प्रकाशन

महाराष्ट्र शासनाव्यतिरिक्त इतर वैधानिक प्राधिकाऱ्यांनी तयार केलेले (भाग एक, एक-अ व एक-ल यांमध्ये प्रसिद्ध केलेले वैधानिक नियम व आदेश यांव्यतिरिक्त इतर) वैधानिक नियम व आदेश ; यात भारत सरकार, उच्च न्यायालय, पोलीस आयुक्त, आयुक्त (राज्य उत्पादन शुल्क), जिल्हादंडाधिकारी व निवडणूक आयोग, निवडणूक न्यायाधिकरण, निवडणूक निर्णय अधिकारी व निवडणूक आयोगाखालील इतर प्राधिकारी यांनी तयार केलेले वैधानिक नियम व आदेश यांचा समावेश होतो.

GENERAL ADMINISTRATION DEPARTMENT

Mantralaya, Mumbai 400 032, dated 2nd April 2016

NOTIFICATION

No. AIS. 1016/C.R. 184/2016/X.—Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Notification No. 14015/14/2015-AIS(I)-B, dated 29th March 2016 is reproduced below :—

In exercise of the powers conferred by Rule 8(1) of the Indian Administrative Service (Recruitment) Rules, 1954 read with Regulation 9(1) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and Rule 3 of the Indian Administrative Service (Probation) Rules, 1954, the President is pleased to appoint the following members of the State Civil Service of Maharashtra to the Indian Administrative Service against the vacancies determined by Government of India Under Regulation 5(1) of the said Regulations in consultation with the State Government for the Select Lists of 2013 and 2014, on probation until further orders and to allocate them to the Maharashtra Cadre, Under Rule 5(1) of the Indian Administrative Services (Cadre) Rules, 1954 :—

Select List 2013 (Against vacancies arisen between 1st January 2013 to 31st December 2013)

Serial No. (1)	Name of the Officer (2)	Date of Birth (3)
1 R. V. Game 1st June 1964
2 A. R. Kale 29th July 1964
3 K. B. Umap 25th November 1962

Serial No. (1)	Name of the Officer (2)	Date of Birth (3)
4	A. J. Subhedar .. .	.. 18th May 1961
5	D. M. Shinde .. .	.. 13th July 1960
6	D. M. Muglikar .. .	.. 7th July 1961
7	D. K. Jagdale .. .	.. 16th July 1959
8	B. G. Pawar .. .	.. 30th December 1959
9	M. G. Ardad .. .	.. 1st June 1964
10	A. B. Yawalkar .. .	.. 11th January 1961
11	M. B. Gawade .. .	.. 19th November 1962
12	A. E. Rayate .. .	.. 12th October 1963
13	D. B. Gawade .. .	.. 28th May 1965
14	A. K. Dongre .. .	.. 30th November 1963
15	G. C. Mangle .. .	.. 10th December 1959
16	N. K. Patil .. .	.. 12th December 1966
17	R. V. Nimbalkar .. .	.. 22nd May 1965

Select List 2014 (Against vacancies arisen between 1st January 2014 to 31st December 2014)

Serial No. (1)	Name of the Officer (2)	Date of Birth (3)
1	G. B. Patil .. .	.. 15th March 1966
2	M. P. Shambharkar .. .	.. 4th December 1966
3	N. A. Gunde (N. S. Khandekar) .. .	.. 23rd June 1968
4	S. Y. Mhase Patil (S. A. Ambekar) .. .	.. 29th May 1970
5	D. B. Desai .. .	.. 26th August 1964
6	R. B. Deshmukh .. .	.. 10th May 1969
7	R. S. Jagtap .. .	.. 20th September 1963
8	R. B. Bhosale .. .	.. 14th May 1965
9	C. L. Pulkundwar .. .	.. 26th October 1968
10	H. P. Tummod .. .	.. 25th June 1967
11	L. S. Mali .. .	.. 1st June 1968
12	S. K. Diwase .. .	.. 4th December 1967

PANKAJ GANGWAR,
Under Secretary to the Government of India.

By order and in the name of the Governor of Maharashtra,

S. R. BANDEKAR-DESHMUKH,
Deputy Secretary to the Government.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL, JURISDICTION

ELECTION PETITION (LODG.) No. 410 OF 2015

Priti Anantprasad Babarekar & Anr.

.. *Petitioners.*

Vs.

Anand Rajendra Thakur

.. *Respondent.*

Ms. Jai Kanade i/b Sandeep M. Phatak for petitioners.

Mr. A. Kumbhakoni i/b Mr. Bhushan Walimbe with Shrivram Mohate for respondent.

CORAM : K. R. SHRIRAM, J.

DATED : 30TH OCTOBER 2015

1. The petition is still in lodging number. The registry has not allotted a final case number because an objection raised by the registry has not been answered. The objection raised is—"How petition is within time?"

2. There were two other objections which the registry had raised. Those have been complied with. The petition was listed for directions before this Court and direction was passed on 10th June 2015 to issue notice to respondent, pending admission. The respondent accordingly appeared. The counsel for the respondent submitted that the petition was grossly time barred. He further submitted that the petitioners have no locus to file this petition.

3. To deal with these two points raised by the counsel for the respondent, let us reproduce paragraph nos. 1 and 2 of the petition :—

(a) The petitioner are the citizens of India, domiciled in the State of Maharashtra and ordinarily residing at the address mentioned in the cause title of the petition. The petitioners state that the petitioners are the voters for Palghar Vidhan Sabha Constituency. The petitioners state that the Members of Legislative Assembly from Palghar Vidhan Sabha Constituency are the voters for the election Member of the Legislative council for the State of Maharashtra.

(b) The petitioners state that by issuing the Press Note date 25th February 2014, the Election Commissioner of India declared the Election Programme for the 7 Local Authorities Constituencies for the Legislative Council for the State of Maharashtra for the Biennial Election (hereinafter referred to as "the said Election" for brevity) for the year 2014. As per this Press Note the notification was to be issued on 3rd March 2014. The last date of filing nomination papers was fixed on 11th March 2014. The scrutiny of the nomination papers was fixed on 11th March 2014. The last date for withdrawal of nomination was fixed on 13th March 2014. The date of polling was fixed on 20th March 2014, and the date of counting of Votes was fixed on 20th March 2014. It was also directed that the process of Election will be completed before 22nd March 2014. Enclosed to the memo of this election petition and is marked as EXHIBIT-A is the true copy of said Press Note issued by respondent on 25th February 2014."

4. Under Section 81(1) of the Representation of the People Act, 1951 (the said Act), an election petition calling in question an election may be presented by any candidate at such election or any elector. In explanation to section 81, an elector is described as a person who was entitled to vote at the election to which the election petition relates, whether he has voted in such election or not. Section 81 reads as under :—

81. Presentation of petitions.—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.

Explanation.—In this sub-section, “elector” means a person who was entitled to vote at the election to which the election petition relates, whether has voted at such election or not.

(2)

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition 8***, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.]

5. The elector is also defined under section 2(1)(a) and (e) of the said Act and the same reads as under :—

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

(a) each of the expressions defined in section 2 or sub-section (1) of section 27 of the Representation of the People Act 1950 (43 of 1950), but not defined in this Act, shall have the same meaning as in that Act ;

.....

[(e) “elector” in relation to a constituency means a person whose name is entered in the electoral roll of that constituency or the time being in force and who is not subject to any of the disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950);]

6. As could be seen from paragraph 1 of the petition, this petition is calling in question an election of member of the Palghar Legislative Council (MLC) for the State of Maharashtra, Admittedly and indisputably, the petitioners are neither a candidate at such election nor voters. The petitioners nowhere state that they were the voters or entitled to vote or candidates. The petitioners only state that the Member of Legislative Assembly from Palghar Vidhan Sabha Constituency are the voters for the election of the Member of Legislative Council from the State of Maharashtra. That cannot give a locus to the petitioners to file this petition under the said Act.

7. In the circumstances, on this ground alone that the petitioners are not entitled to present this petition, the petition requires to be dismissed.

8. On the ground of limitation, i.e., the objection raised by the registry, as provided in Section 81(1) of the said Act, an election petition calling in question any election has to be presented within 45 days from, but not earlier than the date of the election of the returned candidate. The election which is the subject matter of this petition, admittedly was held on 20th March 2014 and the result was also declared on 20th March 2014. Paragraph 4 of the petition reads as under :

4. The petitioners state that the respondent returned candidate has been elected as a Member of the Maharashtra Legislative Council on 20th March 2014.

9. The petition was lodged on 24th April 2015. Therefore, it is presented beyond the 45 days prescribed under Sectin 81(1) of the said Act. On this ground also the petition requires to be dismissed. On the point of limitation, I am guided by the judgment of a Single Judge of this Court (R. M. Savant, J.) in the matter of Pratik Prakashbapu Patil Vs. Maruti Mura Vagare and Ors.¹ :

¹ 2012(5) Mh.L.J. 86.

10. The counsel for the petitioners submitted that the petitioners relied upon Section 17 of the Limitation Act, 1963 to state that the limitation did not begin until the petitioners came to know on 16th March 2015 about the false affidavit filed by the respondent. Counsel also submitted that the facts in this petition are different from the facts in the Pratik Prakashbapu Patil (supra). Even if the facts are slightly different, it is quite clear from the judgment that the provisions of Section 4 to Section 24 of the Limitation Act, are not applicable to the filing of an election petition. Paragraphs 17, 18 and 19 of the said judgment read as under :

17. The last judgment is the judgment in the matter of Lachhman Das Arora (supra), wherein the Apex Court has held that the scheme of the special law i.e. the Representation of People Act shows that the provisions of Sections 4 to 24 of the Limitation Act do not apply. If an election is not filed within the prescribed period of forty five days, then Section 86(1) of the Act which provides that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or 82 or Section 117, straightaway attracted.

18. It was a case where the condonation of delay was sought on the ground that the High Court was closed for the summer vacation and the election petition was filed on the first day of reopening of the High Court. The Apex Court has also held that in so far as filing of the election petition are concerned, the period of limitation cannot be extended on the ground of equity. Paragraph 7 of the said judgment is material, which is reproduced hereunder :

“7. On its plain reading, Section 81 (1) lays down that an election petition calling in question any election may be presented one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 of the Act to the High Court by any candidate at such election or by an elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates. The Act is a special code providing a period of limitation for filing of an election petition. No period for filing of an election petition is prescribed under the Indian Limitation Act. The Act in so far as it relates to presentation and trial of election disputes is a complete code and a special law. The scheme of the special law shows that the provisions of Sections 4 to 24 of the Indian Limitation Act do not apply. If an election petition is not filed within the prescribed period of forty-five days, section 86 (1) of the Act, which provides that the High Court shall dismiss an election petition which does not comply section 81 or section 82 or with the provisions Section 117, is of straightaway attracted.”

19. Hence from a reading of the judgments cited on behalf of the Applicant, the position in law is absolutely clear that the provisions of Sections 4 to 24 of the Limitation Act are not applicable to the filing of an election petition. The Apex Court has also made it clear that equity does not find a place in so far as filing of the said petitions are concerned. In my view the same would take care of the submission of the Election Petitioner that since he was pursuing with the authorities and had also filed a P.I.L., the delay should be condoned. In the light of the aforesaid, the above Application for dismissal of the Election Petition would have to be allowed and is accordingly allowed.

12. In the circumstances, the petition stands dismissed.

No order as to costs.

K. R. SHIRAM, J.

क्रमांक ईपीटी. २०१६/प्र. क्र. २०१/१६/३३,
सामान्य प्रशासन विभाग
मादाम कामा मार्ग, हुतात्मा राजगुरु चौक,
मंत्रालय विस्तार, मुंबई ४०० ०३२.
दिनांक ११ एप्रिल २०१६.

प्रत माहिती व आवश्यक कार्यवाहीस्तव अग्रेषित :—

- (१) सर्व जिल्हाधिकारी व जिल्हा निवडणूक अधिकारी.
- (२) सर्व उप जिल्हाधिकारी व उप निवडणूक अधिकारी.
- (३) निवडनस्ती.

शिरीष मोहोड़,
अवर सचिव व उप मुख्य निवडणूक अधिकारी,
महाराष्ट्र राज्य.